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09/615,473

Filing Date

07/13/2000

First Named Inventor

Marcus Escobosa

Art Unit

2635

Examiner Name

Shimizu, Matsuichiro

Attorney Docket Number

81230.56US1

**ENCLOSURES (Check all that apply)**☐

Fee Transmittal Form

☒

Fee Attached

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Amendment/Reply

☐

After Final

☐

Affidavits/declaration(s)

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Extension of Time Request

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Express Abandonment Request

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Information Disclosure Statement

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Incomplete Application☐Reply to Missing Parts  
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of Appeals and Interferences☒Appeal Communication to TC  
(Appeal Notice, Brief, Reply Brief)☐

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Firm Name

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Signature

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Gary R. Jarosik

Date

May 6, 2005

Reg. No.

35,906

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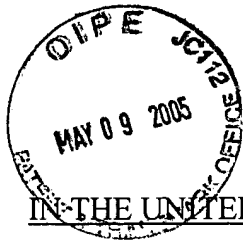
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Escobosa )  
Serial No. 09/615,473 ) Examiner: Shimizu, Matsuichiro  
Filed: July 13, 2000 ) Art Unit: 2635  
Title: Customizable And ) Attny Docket: 81230.56US1  
Upgradable Devices And )  
Methods Related Thereto )

APPEAL BRIEF

Mail Stop Appeal Briefs - Patents  
Commissioner for Patents  
P.O. Box 1450  
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Dear Sir:

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the Examiner's final rejection of claims 54-62, 64-72, and 74-80 which rejection was set forth in the final Office Action mailed March 16, 2005. A timely Notice of Appeal was filed.

This Appeal Brief is being filed in triplicate.

The Commissioner is hereby authorized to charge any fee deficiency or credit overpayment to deposit account number 50-2428 in the name of Greenberg Traurig.

05/10/2005 MAHNE1 00000021 09615473

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By: \_\_\_\_\_

Ranni Matar

I. Real Party In Interest

The real party in interest is Universal Electronic Inc.

II. Related Appeals And Interferences

An appeal of the final rejection of the claims of commonly assigned, U.S. Application Serial No. 10/386,792, filed on March 12, 2003, is pending.

An appeal of the final rejection of the claims of commonly assigned, U.S. Application Serial No. 10/151,635, filed on May 20, 2002, is pending.

An appeal of the final rejection of the claims of commonly assigned, U.S. Application Serial No. 10/411,792, filed on April 11, 2003, is pending.

U.S. Application Serial No. 10/386,792, U.S. Application Serial No. 10/151,635, and U.S. Application Serial No. 10/411,792, all claim the benefit of the subject application for patent.

III. Status Of The Claims

In the application, claims 54-80 remain pending and, having been finally rejected, are the subject of this appeal. Of these claims, dependent claims 63 and 73, while objected to as being dependent upon a rejected base claim, have been deemed to contain allowable subject matter.

Claims 1-53 were canceled during the course of prosecution.

Appendix I provides a clean, double spaced copy of pending claims 54-80.

IV. Status Of Amendments

The claims are in condition for appeal – no further amendments to the claims are pending.

## V. Summary Of The Claimed Subject Matter

With reference to page 17, lines 16+ and Figs. 5 and 5a of the subject application for patent, the claimed invention is generally directed to a method of configuring a remote control to command functions of a consumer electronic device. To this end, the claims set forth, among other things, receiving input (42) that identifies a type and brand of consumer electronic device and using the input that identifies the type and brand of consumer electronic device to select a plurality of command sets that have been identified as being candidates for commanding operations of the specified type and brand of consumer electronic device. The plurality of command sets that have been identified as being candidates for commanding operations of the specified type and brand of the consumer electronic device are then downloaded into a remote control (10a) whereby a user may determine by experimentation (49a) which of the plurality of command sets is appropriate for commanding operations of the consumer electronic device that is actually owned by the user. This method for configuring a remote control solves, among others, the problem of how to configure a remote control when the user does not have his model number available or when a model number provided is not recognized by the configuring system.

## VI. Grounds Of Rejection To Be Reviewed On Appeal

1. Whether the rejection of claims 54-57, 60-62, 64, 66-71, 74, and 76-80 under 35 U.S.C. § 103 based upon the combination of Kemink and O'Donnell can be maintained when the combination of Kemink and O'Donnell fails to disclose, teach, or suggest, either expressly or inherently, each and every element set forth in the claims.

2. Whether the rejection of claims 54-57, 59-62, 64-71, and 74-80 under 35 U.S.C. § 103 based upon the combination of Kemink and O'Donnell can be maintained when O'Donnell fails to suggest modifying Kemink to arrive at the invention set forth in the claims.

3. Whether the rejection of dependent claims 58 and 72 under 35 U.S.C. § 103 based upon the combination of Kemink and Hayes can be maintained when it has been previously submitted that Hayes is not a prior art reference.

## VII. Argument

### A) Summary of the outstanding rejections of the claims

Claims 54-62, 64-72, and 74-80 stand rejected under 35 U.S.C. § 103 as being rendered obvious primarily by Kemink (WO 0017738) in view of O'Donnell (U.S. Patent No. 6,549,143).

Specifically, the Office Action of March 16, 2005 asserted that Kemink teaches a method for selecting function codes for use in a remote control which includes receiving user input at a computer that functions to specify a type of a consumer electronic device and brand of the consumer electronic device (citing to page 6, lines 10-20); using the user input at the computer to select a plurality of function code sets that have been identified as being candidates for commanding operations of the specified type and brand of the consumer electronic device (*no citation provided*); and causing at least a subset of each of the plurality of selected function codes sets to be downloaded from the computer into the remote control whereby a user may interact with the remote control to choose which one of the plurality of function code sets is appropriate for commanding operations of the specified type and brand of the consumer electronic device (citing to page 6, lines 10-20 and specifically the language directed to “selected graphic interface

code”). While the rejection of the claims acknowledged that Kemink fails to disclose a user interacting with a remote control to determine by experimentation which one of the plurality of function codes sets is appropriate for commanding operations of the consumer device, it was asserted that such is disclosed within O’Donnell (citing to col. 3, lines 36-50). Thus, it was concluded that “it would have been obvious to a person skilled in the art at the time the invention was made to include a user may interact with the remote control to determine by experimentation which one of the plurality of function code sets is appropriate in the device of Kemink because Kemink suggests choosing option which one of the plurality of function code sets is appropriate and O’Donnell teaches a user may interact with the remote control to determine by experimentation which one of the plurality of function code sets is appropriate for commanding operations for the purpose of providing operable device code.”

B) Applicable case law

It is respectfully submitted that a rejection under 35 U.S.C. § 103 requires that a combination of references disclose, either expressly or inherently, each and every element set forth in the claims, considering the claims “as a whole.” The requirement that the claimed invention be considered “as a whole” is meant to prevent evaluation of an invention part by part, i.e., breaking an invention into its component parts and then merely finding a reference containing one part, another reference containing another part, etc., and to prevent the impermissible use of the specification of the applicant as a template to combine these parts for the purpose of deprecating the claimed invention. Thus, to assure that such “hindsight reasoning” is not used when assessing the patentability of a claimed invention, a rejection under 35 U.S.C. § 103 requires a demonstration that an artisan of ordinary skill in the art at the time of

the invention, with no knowledge of the claimed invention, would have selected the various parts from the references and combined them in the claimed manner. In other words, the test of whether it would have been obvious to select specific teachings and combine them must still be met by identification of some suggestion, teaching, or motivation in the prior art, arising from what the prior art would have taught a person of ordinary skill in the field of the invention. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

C) Remarks addressing the rejection of claims 54-57, 60-62, 64, 66-71, 74 and 76-80

As discussed above, the claimed invention is directed to a method of configuring a remote control to command functions of a consumer electronic device which, among others, solves the problem of how to configure a remote control when the user does not have his model number available or when a model number provided is not recognized by the configuring system.

In contrast to the claimed invention, the system and method described in Kemink requires a user to know the model number of a consumer electronic device in order to configure the remote control. In this regard, Kemink describes that the remote control is configured immediately after the downloading has occurred and what is downloaded is the single command set which the configuring system of Kemink identifies, as a function of the specified model number, as being appropriate for commanding the consumer electronic device.

More particularly, the configuring system of Kemink uses a consumer electronic device specific profile to determine the single command set that is to be downloaded into the remote control to configure the remote control to command that consumer electronic device. (See Page 6, lines 7-10). The consumer electronic device specific profile is created by a user being “led through a sequence of links and web pages until a manufacturer’s model number is found that

corresponds, for example, to the television 251 in FIG. 2.” (See Page 6, lines 13-15). While the user may also be presented with a plurality of graphical user interfaces, i.e., nothing more than “selectable buttons, icons, clusters of icons, templates, and the like” (See Page 4, lines 31-33) which are actuated to cause select function codes from a command set to be transmitted to an intended target consumer electronic device, one of which is downloadable (not a plurality as alleged in the rejection of the claims) for use in the remote control (See Page 6, lines 15-17, Page 7, lines 18-22), the fact remains that only a single command set, i.e., the single command set which the configuring system of Kemink determines to be appropriate for the particular consumer electronic device model number specified by the user, is downloaded into the remote control.

Therefore, Kemink, which requires the use of a manufacturer’s model number to cause a single command set to be downloaded into a remote control, suffers the very disadvantage the subject invention seeks to overcome.

From the foregoing, it is submitted that the configuring system of Kemink, which uses input that specifies a manufacturer’s model number to cause a single command set to be downloaded into a remote control, cannot be said to disclose, teach, or suggest the claimed using a type and brand of a consumer electronic device to cause *a plurality of command sets identified as being appropriate for commanding functions of the specified type and brand of consumer electronic device* to be downloaded into a remote control after which a user [not the configuring system as in Kemink] determines which of the downloaded *plurality of command sets* is appropriate for commanding the consumer electronic device actually owned by the user. (See claims 54 and 71).



It is further respectfully submitted that a *prima facie* case of obviousness has not been presented since the rejection of the claims fails to assert that Kemink discloses downloading a plurality of command sets identified as being candidates for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device. Rather, the rejection of the claims sets forth that Kemink discloses at Page 6, lines 10-20, the downloading of “a plurality of GUI corresponding to the selected appliance.” While downloading a GUI (i.e., a computer environment or program that displays, or facilitates the display of, on-screen options, usually in the form of icons or menus by means of which users may enter commands) is the subject of dependent claims 66 and 76, independent claims 54 and 71 of the subject application for patent call for the downloading of a plurality of command sets, defined on page 14, lines 22-25 of the subject application for patent as including “data which is transmittable to the consumer electronic device to control the device.” Since it cannot be argued that a GUI is “data which is transmittable to the consumer electronic device to control the device,” Kemink cannot be said to disclose those elements set forth in the rejection of the claims and the rejection of the claims must be withdrawn.

It is additionally submitted that the reason that the rejection of the claims cites to the downloading of a GUI (which is not the subject of independent claims 54 and 71) and fails to cite to any passage from Kemink that can be said to disclose, teach, or suggest that a plurality of command sets identified as being candidates for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device is downloaded into the remote control is for the simple reason that Kemink fails to contemplate this aspect of the claimed invention. That Kemink fails to contemplate this aspect of the claimed invention is particularly evidenced by the fact (which has been acknowledged by the Examiner)

that Kemink fails to describe any process for interacting with a remote control to select one of plural downloaded command sets. In this regard, the reason that Kemink fails to describe any process for interacting with a remote control to select one of plural downloaded command sets is attributed to the fact that Kemink only allows for the downloading of a single command set, i.e., a user is required to know in advance the model number of their consumer electronic device and the configuring system of Kemink uses the model number to select the single command set which is downloaded into the remote control.

Thus, in summary, it is respectfully submitted that, since Kemink fails to disclose at least the claimed selecting and downloading of a plurality of command sets identified as being candidates for commanding operations of a specified type and brand of consumer appliance, it cannot be said that a combination of Kemink and O'Donnell disclose each and every element of the claimed invention as is required to maintain a rejection under 35 U.S.C. § 103. For at least this reason the rejection of the claims must be withdrawn.

Considering now O'Donnell, it is respectfully submitted that nothing from within O'Donnell can be said to disclose, teach, or suggest a user interacting with a remote control to determine by experimentation which one of a plurality of function code sets that are candidates for commanding operations of a specified type and brand of consumer appliance is appropriate from commanding an operation of that appliance as is claimed. As concerns the passages of O'Donnell cited in the rejection of the claims, namely, col. 3, lines 7-14 and lines 36-50, these passages only describe that a television will receive a transmitted remote control command signal and, if the remote control was not in the television operational mode when the signal was transmitted (for example the VCR mode key having been activated prior to the signal transmission), the television will display to the user what device operational mode the remote

control was in at the time the signal was transmitted (for example by displaying “VCR selected”). Thus, within the system described within O’Donnell, the television is programmed to be responsive to a command transmitted from a single command set for each of a plurality of different types of appliances, e.g., from the single VCR command set, from the single DVD command set, etc. What is not described, suggested, or taught within O’Donnell, however, is a system in which a user selects by experimentation a command set from a plurality of command sets for commanding operations of one specified type and brand of consumer appliance, e.g., which command set from plural command sets capable of controlling a SONY brand TV is appropriate for the system of the user. Furthermore, not only does O’Donnell fail to describe configuring a remote control by means of experimentation, O’Donnell fails to describe, teach, or suggest any method for configuring a remote control, i.e., any method for selecting a command set from a plurality of command sets appropriate for commanding operations of each of one specified type of consumer appliance such as a TV, VCR, DVD, etc. Accordingly, nothing from within O’Donnell can be said to suggest the modification espoused in the rejection of the claims and, for this reason, the rejection of the claims must be withdrawn.

It is yet further respectfully submitted that, since the system Kemink does not disclose, teach, or suggest downloading a plurality of command sets identified as being candidates for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device, instead disclosing and teaching the downloading of a single command set selected through the use of the user entered model number, there would be no need and no motivation to modify Kemink “to include a user may interact with the remote control to determine by experimentation which one of the plurality of command sets is

appropriate” as has been set forth in the Office Action. For this still further reason, it is submitted that the rejection of the claims must be withdrawn.

D) Remarks addressing the rejection of claims 58 and 72

Claims 58 and 72 stand rejected as being rendered obvious by the combination of Kemink and Hayes. As previously submitted, Hayes cannot be used as a prior art reference with respect to the subject application for patent. Accordingly, it is respectfully submitted that this rejection must be withdrawn.

E) Remarks addressing the rejection of claim 59

With respect to dependent claim 59, it is respectfully submitted that the cited to passage from Kemink relating to combining icons fails to disclose, teach, or suggest the claimed using the one of the plurality of command sets that is appropriate for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device to identify an extended command set for use in commanding extended operations of the specified type and brand of the consumer electronic which, as noted above, includes “data which is transmittable to the consumer electronic device to control the device.” For the simple reason that disclosure directed to “choosing to combine the downloaded GUI code with other GUI code” has nothing to do with using a command set to further identify additional useful commands for commanding extended operational functions of a device, as is claimed, it is submitted that this disclosure from Kemink cannot suggest the modification espoused in the rejection of the claims. Accordingly, the rejection of dependent claim 59 must also be withdrawn.

F) Remarks addressing the rejection of claim 65 and 75

With respect to claims 65 and 75, it is respectfully submitted that nothing from Foster describes, teaches, or suggests the claimed downloading of assignments of function codes to the key layout using a speaker in the downloading process. While Foster may describe in the cited passage using vol+ and vol- keys to control the output of a speaker, this disclosure has nothing to do with subject matter claimed. Thus, Foster cannot suggest the modification espoused in the rejection of the claims and dependent claims 65 and 75 must be deemed to contain patentable subject matter.

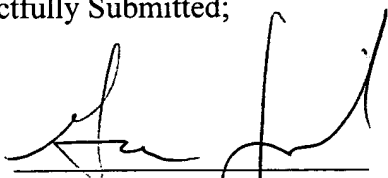
G) Conclusion

It is respectfully submitted that, when the claims are considered *as a whole*, the claims are not rendered obvious by the cited references. As such, it is respectfully submitted that the application is in good and proper form for allowance. Such action of the part of the Board is respectfully requested.

Respectfully Submitted;

Date: May 6, 2005

By:



Gary R. Jarosik  
Reg. No. 35,906  
Greenberg Traurig, LLP  
77 W. Wacker Drive, Suite 2500  
Chicago, Illinois 60601  
(312) 456-8449

## APPENDIX I

54. A method for selecting a command set for use in a remote control, comprising:

receiving user input at a computer that functions to specify a type of a consumer electronic device and a brand of the consumer electronic device;

using the user input at the computer to select a plurality of command sets that have been identified as being candidates for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device; and

causing at least a subset of each of the plurality of selected command sets to be downloaded from the computer into the remote control whereby a user may interact with the remote control to determine by experimentation which one of the plurality of command sets is appropriate for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device.

55. The method as recited in claim 54, comprising displaying to the user a list comprising a plurality of types of consumer electronic device and the user selecting one of the plurality of types of consumer electronic device from the list comprises the user input that functions to specify the type of the consumer electronic device.

56. The method as recited in claim 54, comprising displaying to the user a list comprising a plurality of brands of consumer electronic device and the user selecting one of the plurality of brands of consumer electronic device from the list comprises the user input that functions to specify the brand of the consumer electronic device.

57. The method as recited in claim 54, wherein the subset of each of the plurality of command sets includes at least a code for commanding a power operation of the specified type of the consumer electronic device and the specified brand of the consumer electronic device.

58. The method as recited in claim 54, comprising arranging the downloaded plurality of command sets such that the plurality of command sets will be tested in an order according to their install base when the user interacts with the remote control to determine by experimentation which one of the plurality of function code sets is appropriate for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device.

59. The method as recited in claim 54, comprising using the one of the plurality of command sets that is appropriate for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device to identify an extended command set for use in commanding extended operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device.

60. The method as recited in claim 54, wherein the user input is received at the computer via an Internet connection.

61. The method as recited in claim 54, wherein the plurality of command sets are downloaded from the computer directly into the remote control.

62. The method as recited in claim 54, comprising displaying to the user a key layout for the remote control and a list of functions from the command set appropriate for commanding operations of the specified type of the consumer electronic device and the specified brand of the

consumer electronic device and accepting user input to assign functions from the list of functions to the key layout, assignments of functions to the key layout being downloadable from the computer to the remote control to thereby configure the remote control to command operations of the specified type of the consumer electronic device and the specified brand of consumer electronic device.

63. The method as recited in claim 62, comprising displaying an amount of memory needed in the remote control to download from the computer to the remote control assignments of functions to the key layout.

64. The method as recited in claim 62, comprising presenting a graphical user interface having drag and drop capabilities for use in assigning functions from the list of functions to the key layout.

65. The method as recited in claim 62, comprising downloading from the computer to the remote control via a speaker assignments of function codes to the key layout.

66. The method as recited in claim 62, comprising downloading from the computer to the remote control a user interface having keys appropriate for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device, the user interface corresponding to the key layout.

67. The method as recited in claim 62, comprising downloading from the computer to the remote control via a memory card assignments of functions to the key layout.



68. The method as recited in claim 62, wherein the key layout comprises keys displayable in a display of the remote control.

69. The method as recited in claim 62, comprising directly downloading from the computer to the remote control assignments of functions to the key layout.

70. The method as recited in claim 54, wherein the plurality of command sets each comprise codes for driving an IR emitting diode of the remote control.

71. A method for selecting a command set for use in a remote control, comprising:

displaying at a Web site a list comprising a plurality of types of consumer electronic device for allowing a user to select one of the plurality of types of consumer electronic device from the list to specify a type of a consumer electronic device;

displaying at the Web site a list comprising a plurality of brands of consumer electronic device for allowing the user to select one of the plurality of brands of consumer electronic from the list to specify a brand of the consumer electronic device;

using the user specified type of the consumer electronic device and the consumer specified brand of the consumer electronic device to select a plurality of command sets that have been identified as being candidates for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device;

making at least a subset of each of the plurality of selected command sets available whereby a user may determine by experimentation which one of the plurality of command sets is appropriate for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device; and

displaying to the user at the Web site a key layout for the remote control and a list of functions from the command sets determined to be appropriate for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device and accepting user input to assign functions from the list of functions to the key layout;

wherein the plurality of command sets and the assignments of functions to the key layout are downloadable from the Web site to the remote control to thereby configure the remote control to command operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device.

72. The method as recited in claim 51, comprising arranging the plurality of command sets such that the plurality of command sets will be tested in an order according to their install base when the user determines by experimentation which one of the plurality of command sets is appropriate for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device.

73. The method as recited in claim 71, comprising displaying an amount of memory needed in the remote control to download from the Web site to the remote control assignments of functions to the key layout.

74. The method as recited in claim 71, comprising presenting a graphical user interface having drag and drop capabilities for use in assigning functions from the list of functions to the key layout.

- 75. The method as recited in claim 71, comprising downloading from Web site to the remote control via a speaker assignments of function codes to the key layout.

76. The method as recited in claim 71, comprising downloading from the Web site to the remote control a user interface having keys appropriate for commanding operations of the specified type of the consumer electronic device and the specified brand of the consumer electronic device, the user interface corresponding to the key layout.

77. The method as recited in claim 71, comprising downloading from the Web site to the remote control via a memory card assignments of functions to the key layout.

78. The method as recited in claim 71, wherein the key layout comprises keys displayable in a display of the remote control.

79. The method as recited in claim 71, comprising directly downloading from the Web site to the remote control assignments of functions to the key layout.

80. The method as recited in claim 71, wherein the plurality of command sets each comprise codes for driving an IR emitting diode of the remote control.